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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held May 10, 2012 |
| Commissioners Present: |  |

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| Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer | | |  |
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| Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pennsylvania Universal Service Fund | I-00040105 |
| AT&T Communications of Pennsylvania, *et al.*  v.  Armstrong Telephone Company-Pennsylvania, *et al.* | C-2009-2098380, *et al.* |
| Implementation of the Federal Communications Commission’s Order of November 18, 2011 As Amended Or Revised And Coordination With Certain Intrastate Matters | M-2012-2291824 |

**CONSOLIDATED SHORT FORM AND PROTECTIVE ORDER**

**BY THE COMMISSION:**

In accordance with our previous Order entered on March 22, 2012, in this proceeding, this Commission is moving ahead with the implementation of the substantial changes to the intercarrier carrier compensation regime ordered by the Federal Communications Commission (*FCC*) in its decision, *In re: Connect America Fund,* Docket No. 10-90, et.al. (*FCC Order*[[1]](#footnote-1)). We again note that although the *FCC Order* has been appealed, it has not been stayed and it triggers a series of compliance obligations and associated deadlines that involve both regulated telecommunications carriers and State utility commissions.[[2]](#footnote-2) The *FCC Order* directs a multiyear transition from current intrastate switched carrier access rates to initial parity with federal access rates, and a subsequent movement to a uniform bill-and-keep intercarrier compensation regime.

At the outset of this transition, all transitional intrastate switched carrier access rate elements for incumbent local exchange carriers (ILECs) classified as price cap carriers at the federal level were capped at their levels in effect on December 29, 2011, and all terminating transitional intrastate switched access rate elements for ILECs classified as rate-of-return (ROR) carriers at the federal level were capped at their levels in effect December 29, 2011. Subsequent to this, the FCC Order directs a multiyear process under which ILECs are to make filings effective July 1 of each year to gradually transition certain interstate and intrastate access rates to the bill-and-keep regime. A generally corresponding transition is also contemplated for the intrastate switched carrier access services and rates of competitive local exchange carriers (CLECs). The initial transition step that is contemplated by the *FCC Order* will be implemented through an intrastate switched carrier access revenue reduction mechanism that will also affect decreases in the values of individual intrastate switched carrier access services rate elements.  *FCC Order*, ¶¶ 799-801, at 270-272, and Fig. 9.

**BACKGROUND**

The *FCC Order* affects current and future Commission proceedings and responsibilities, including an investigation into intrastate access charges and the need for specific carrier information related to access service. The Commission’s decisions made in the implementation of the *FCC Order,* do not infringe upon the pursuit of our appellate rights in the pending federal appeals.[[3]](#footnote-3)

Through an Order entered on March 20, 2012, at Docket Nos. I-00040105 and C‑2009‑2098380, *et al.*, the Commission reopened the record for a limited purpose and invited the submission of updated Petitions for Reconsideration in the Rural ILEC Access Charge Investigation proceeding relevant to the Commission’s July 18, 2011 Order and the *FCC Order*.[[4]](#footnote-4) Related updated Petitions for Reconsideration, accompanying verified statements, and Answers were submitted on April 9 and 19, 2012.

The Commission also initiated its FCC Order Implementation proceeding through an order that was entered on March 22, 2012, at Docket No. M-2012-2291824.[[5]](#footnote-5) The Commission invited comments on the implementation of the FCC Order and conducted an on-the-record technical collaborative session on April 20, 2012. The Commission has also proceeded with certain activities relating to the necessary intrastate switched carrier access tariffs that need to be filed in response to the FCC Order.[[6]](#footnote-6)

**DISCUSSION**

Certain summary findings concerning the updated Petitions for Reconsideration currently pending at Docket Nos. I-00040105 and C-2009-2098380, *et al.*, must be synchronized with the Commission’s ongoing activities relating to its implementa­tion of the *FCC Order* at Docket No. M-2012-2291824. These specific summary findings in the Commission’s Rural ILEC Access Charge Investigation proceeding at Docket Nos. I‑00040105 and C-2009-2098380, *et al.*, do not dispose of all the pending issues and are only intended to provide the necessary guidance as we move forward with the FCC Order Implementation activities at Docket No. M‑2012-2291824. Moreover, given the industry’s immediate need for guidance for filing intrastate switched carrier access tariffs to be effective July 1, 2012, we provide the necessary direction in this order, pending a detailed discussion of our decisions in the upcoming full reconsideration order at Docket Nos. I-00040105 and C-2009-2098380 *et al*.

Commensurate with our ongoing activities to implement the transition, the Commission has engaged in substantial collaborative discussions, seeking vital input from the telecommunications carriers directly impacted by the *FCC Order*. In accordance with our March 22, 2012 Order in this proceeding, an extensive on-the-record collaborative session was held on April 20, 2012. As a result of these collaborative discussions and review of carrier input, the Commission has prepared computational templates requesting specific carrier information and data necessary to carry out our responsibility. Unavoidably, carriers are required to submit sensitive switched access demand and revenue information related to their respective and anticipated Transitional Intrastate Access Services tariff submissions.

To ensure the confidential proprietary status of the information, the Commission shall grant a protective order for information required from carriers as part of the Commission’s implementation of this first step (Step 1) of the transition of the intrastate intercarrier compensation regime as outlined in the *FCC Order*.

**Maintaining the Intrastate Carrier Charge**

The treatment of the intrastate fixed per line carrier charge or common carrier line charge (CC/CCLC) element of the rural incumbent local exchange carriers (rural ILECs), as well as of other ILECs and competitive local exchange carriers (CLECs) under the *FCC Order*, is an issue that needs to be immediately and summarily addressed. This issue has been raised in the pending updated petitions for reconsideration in our Rural ILEC Access Charge Investigation at Docket Nos. I-00040105 and C‑2009‑2098380, *et al.* For example, AT&T seeks the outright elimination of the rural ILEC CC/CCLC.[[7]](#footnote-7) The Pennsylvania Telephone Association (PTA) and CenturyLink oppose this outcome,[[8]](#footnote-8) and the Office of Consumer Advocate (OCA) points to our July 18, 2011 Order where we stated that “the RLECs’ intrastate switched access service NTS [non-traffic sensitive] joint and common costs primarily associated with the RLECs’ local loop plant must be recovered from all users of the RLECs’ network.”[[9]](#footnote-9) We see no reason why the underlying rationale of our July 18, 2011 Order in maintaining the intrastate CC/CCLC at some level at this time should change irrespective of the intercarrier compensation regime that the *FCC Order* is gradually placing into effect.

**Allocating the Intrastate Carrier Charge**

The issue of allocating the intrastate CC/CCLC between originating and terminating switched access traffic for purposes of implementing the *FCC Order* intercarrier compensation regime has been raised both in the updated petitions for reconsideration in the Rural ILEC Access Charge Investigation adjudication at Docket Nos. I-00040105 and C-2009-2098380, as well as in the FCC Order Implementation proceeding at Docket No. M-2012-2291824. AT&T in its updated petition for reconsideration has put forward a methodology addressing the allocation of the intrastate CC/CCLC revenues between originating and terminating traffic and its use in the context of the *FCC Order*.[[10]](#footnote-10) This AT&T method has been endorsed by the OCA.[[11]](#footnote-11)

In the context of the FCC Order Implementation proceeding at Docket No. M‑2012‑2291824, AT&T submitted a letter communication dated on May 2, 2012, recommending that the Commission “should adopt a subset of the FCC-approved templates, fine-tuned to incorporate data requirements unique to Pennsylvania (such as the Carrier Charge calculations), as the means by which carriers, including CLECs, will provide standardized information to this Commission as support for their proposed intrastate access tariffs” (albeit with possible excep­tions among a certain category of smaller ILECs).[[12]](#footnote-12) The AT&T May 2, 2012 letter included a “Terminating Intrastate Carrier Charge (CC)/Common Carrier Line (CCL) Calculation Work­sheet” that also purports to convert the flat per access line per month intrastate CC/CCLC amount to a per minute of use (MOU) rate. Verizon, via a letter submission dated May 3, 2012, supported the AT&T proposal.[[13]](#footnote-13) With a letter submission dated May 3, 2012, CenturyLink opposed certain aspects of the AT&T recommendation. CenturyLink stated the following:

CenturyLink objects to a requirement to provide any additional information beyond a split in the per line CC/CCL (as between originating and terminating). In particular, CenturyLink strongly objects to AT&T foisting a requirement to convert to a permanent CC/CCL per MOU-based charge. Once again AT&T engages the Commission and Pennsylvania parties in unnecessary work, distraction, and expense. CenturyLink is confident that the Pennsylvania Commission and Staff can readily address the upcoming tariff filings without the AT&T-orchestrated additional worksheet and conversion requirement.

CenturyLink Letter Submission, Docket No. M-2012-2291824, May 3, 2012, at 2.

We conclude that the use of the AT&T additional worksheet relating to the per MOU conversion of the originating and terminating CC/CCLC is unnecessary at this time. Rather, we believe the intrastate CC/CCLC revenue allocation method that was put forward by AT&T in its above-referenced Exhibit C is sufficient. We also conclude that we do not need to utilize a subset of the FCC prescribed templates. We believe that the Commission generated templates are generally similar to those that will be used for federal purposes. Finally, we continue to have appropriate jurisdiction to address the anticipated *intrastate* switched carrier access tariff submissions and supporting calculations that are occasioned because of the *FCC Order*.

**Level of Intrastate Carrier Charge**

In view of the drastic effects of the *FCC Order* to the decisions made in our July 18, 2011 Order, we stay the intrastate switched carrier access rate reforms that were then directed. These include the related Commission-directed reforms of the CC/CCLC rates. The computational mechanism of intrastate intercarrier compensation reform that is prescribed under the FCC Order will sufficiently implicate the terminating CC/CCLC rates and revenues of various carriers. Thus, prescribing a precise level of terminating CC/CCLC rates is not necessary at this time.

**Intrastate Originating Access Reforms**

In view of the drastic impacts that the *FCC Order* has had on the measured intrastate access reforms adopted with our July 18, 2011 Order, and in view of the further FCC actions contemplated in the area of intercarrier compensation for originating traffic, we are reluctant at this time to engage in any actions affecting intrastate switched carrier access rates for originating traffic.[[14]](#footnote-14) The only exception in this area concerns the allocation of the intrastate CC/CCLC that has been previously addressed.

**Protective Order**

As previously stated, carriers, as part of Step 1, will be submitting sensitive switched access demand and revenue information related to their respective and anticipated Transitional Intrastate Access Services tariff submissions. Under Commission regulations at 52 Pa. Code §§ 5.362(7) and 5.423(b), a Protective Order may be entered to limit or prohibit disclosure of confidential information where the potential harm to the party would be substantial and outweighs the public’s interest in having access to the confidential information. In its review whether to grant a Protective Order, the Commission must balance the potential harm to the party of disclosure of the confidential information at issue with the public’s interest in free and open access to the administrative process.

The relevant factors to be considered when addressing a request for protective order include: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information may already be known by others; (3) the potential value of such information to the participant and the participant’s competitors and trade partners; and (4) other statutes or regulations dealing specifically with the disclosure of the information. 52 Pa. Code §§ 5.423(a)(1)-(3) and (5).

Of the information requested of carriers in this matter, certain portions satisfy the standard for the grant of a protective order. Specifically, we shall treat carriers’ access line totals, switched access traffic demand minutes of use (MOUs), and disaggregated revenues derived from individual carrier access rate elements as proprietary. Historically, the Commission has ruled this information to be confidential and proprietary in past ILEC price cap and revenue-neutral rate rebalancing filings. In a competitive market, the release of this type of information and financial data would cause substantial harm to a carrier that is providing wholesale switched carrier access services and may be competing with other providers of functionally equivalent or similar services. The resulting harm would be sufficient to outweigh the public interest in access to the information. While we are sensitive to the open access of public information, the disclosure of information that harms the competitive position of carriers would thereby cause indirect harm to Pennsylvania’s telecommunications consumer, by its negative impact upon the competitive telecommunications market.

For those portions of the information requested from carriers that do not raise the same concern for proprietary treatment and confidential status because they do not negatively impact the competitive positions of telecommunications carriers, we shall require disclosure. Specifically, this information includes present and proposed individual Transitional Access Service Rate Elements and present and proposed total Transitional Intrastate Access Service Revenues.

The information required from carriers in order to facilitate the Commission’s efforts to implement Step 1[[15]](#footnote-15) of this transition is set forth in Attachment A. The portions of the information submitted by carriers which shall be afforded confidential proprietary status and therefore not subject to public disclosure are highlighted in blue. The portions of the information submitted by carriers which shall be subject to public access are highlighted in yellow. These forms are available on the Commission web page at <http://www.puc.state.pa.us/telecom/FCC_Implementation_Order.aspx> under the section entitled “Mandated Access Charge Reduction Filings.”

While we issue this Protective Order to assure the confidentiality of proprietary and otherwise competitively sensitive material, we also however, expressly note that any protective order granted in the circumstances is with the reservation that the protective order does not prohibit the sharing of all carrier information submitted to the Commission if sought in connection with any joint state-federal investigation or enforcement action.

**Timing and Process for Filing Tariffs**

All local exchange carriers (LECs) are to file tariff supplements and supporting information, which illustrates their calculations of any rates contained in the tariff supplements. In order to meet the FCC’s July 1, 2012 deadline to reduce LEC access rates, we shall require carriers to file their tariff supplements by the following revised dates:

* ILECs who are Price Cap Carriers at the federal level must file tariff supplements and supporting calculations by May 17, 2012.
* ILECs who are Rate-of-Return Carriers at the federal level must file tariff supplements and supporting calculations by May 23, 2012.
* CLECs must file Tariff Supplements and supporting calculations by June 1, 2012.

In addition to filing hard copies of their filings with the Commission’s Secretary’s Bureau, all LECs should send electronic copies of their filings in Microsoft Excel Format to [RA-PUCTelco@pa.gov](mailto:RA-PUCTelco@pa.gov).

**CONCLUSION**

Given the recent actions of the FCC and the effect of the FCC Order on pending Commission proceedings, we will stay the intrastate switched carrier access rate reforms directed by our July 18, 2011 Order. In order to meet the aggressive time frame of the FCC, we state now that we will maintain intrastate fixed line carrier charge or common carrier line charge at some level at this time, with a detailed discussion provided in our upcoming order addressing the updated petitions for reconsideration of our July 18, 2011 Order at Docket Nos. I-00040105 and C-2009-2098380 *et al*. We will adopt the computational templates attached to this order, which also utilize the CC/CCLC revenue allocation method set forth herein. Lastly, to ensure the confidential proprietary status of the information requested by Commission staff, the Commission shall grant a protective order for information required from carriers as part of the Commission’s implementation of Step 1 of the eventual transition of the intercarrier compensation regime as outlined in the *FCC Order*. **THEREFORE;**

**IT IS ORDERED:**

1. That the intrastate switched carrier access rate reforms, including the reforms of the fixed line carrier charge or common carrier line charge, directed in our July 18, 2011 Order at Docket Nos. I-00040105, C-2009-2098380, *et al.*, are hereby stayed consistent with the discussion in this Consolidated Order.
2. That the intrastate fixed line carrier charge or common carrier line rate element will be maintained at this time consistent with this Consolidated Order, with a detailed discussion to be provided in the upcoming order addressing the updated petitions for reconsideration of our July 18, 2011 Order at Docket Nos. I-00040105, C-2009-2098380, *et al*.
3. That the intrastate fixed line carrier charge or common carrier line charge revenue allocation method set forth by AT&T Communications of Pennsylvania in Exhibit C of its April 9, 2012 affidavit is adopted.
4. That we decline to engage in further actions affecting intrastate switched carrier access rates for originating traffic at this time.
5. That all Incumbent Local Exchange Carriers who are Price Cap Carriers at the federal level file tariff supplements and supporting calculations by May 17, 2012.
6. That all Incumbent Local Exchange Carriers who are Rate-of-Return Carriers at the federal level must file tariff supplements and supporting calculations by May 23, 2012.
7. That all Competitive Local Exchange Carriers must file Tariff Supplements and supporting calculations by June 1, 2012.
8. That failure to file these tariff supplements may be subject to civil penalties of up to $1,000 per violation per day payable to the Commonwealth of Pennsylvania, in accordance with 66 Pa. C.S. § 3301(a)&(b).
9. That a protective order pursuant to this Commission’s authority under 52 Pa. Code §§ 5.362(7) and 5.423(b) be issued for all material designated confidential, as illustrated in Attachment A, and submitted by telecommunication carriers in connection with state implementation of the Federal Communications Commission’s Order, *In re: Connect America Fund*, Docket No. 10-90, *et.al.*
10. The protective order is granted with the reservation that the protective order does not prohibit the sharing of all telecommunications carrier information submitted to the commission if sought in connection with any joint state-federal investigation or enforcement action.
11. That this Order be served on all Incumbent Local Exchange Carriers, those Competitive Local Exchange Carriers having switched access tariffs, the Pennsylvania Telephone Association, the Broadband Cable Association of Pennsylvania, the Office of Consumer Advocate, and the Office of Small Business Advocate.  In addition, this Order shall be posted on the Commission’s website.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 10, 2012

ORDER ENTERED: May 10, 2012

1. See *FCC Order* adopted October 27, 2011, and Released November 18, 2011. *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, W Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-state Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform - Mobility Fund*, WT Docket No. 10-208. The FCC has issued additional reconsideration and clarification Orders in the same proceeding and the issuance of further such FCC rulings is anticipated (collectively *FCC Order*). [↑](#footnote-ref-1)
2. Docket No. M-2012-2291824, Order entered March 22, 2012, at 1. [↑](#footnote-ref-2)
3. *Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission* v. *Federal Communications Commission and the United States of America*, Docket Nos. 11-9900 and 11-9585 (10th Cir. 2011). [↑](#footnote-ref-3)
4. *Investigation Regarding Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and the Pennsylvania Universal Service Fund et al.* Docket Nos. I-00040105, C-2009-2098380 *et al.* Order entered March 20, 2012; Order entered July 18, 2011. [↑](#footnote-ref-4)
5. *Implementation of the Federal Communications Commission’s Order of November 18, 2011 As Amended Or Revised And Coordination With Certain Intrastate Matters*, Docket No. M-2012-2291824, Order entered March 22, 2012. [↑](#footnote-ref-5)
6. Secretarial Letter, Docket No. M-2012-2291824, April 3, 2012 (draft tariff calculation support templates and filing schedule). [↑](#footnote-ref-6)
7. AT&T, Updated PFR, April 9, 2012, at 4. *See also* Sprint Answer to Updated PFRs, at 3. [↑](#footnote-ref-7)
8. Joint Answer of PTA and CenturyLink to the AT&T PFR, April 19, 2012, ¶ 21, at 9-10, citing July 18, 2011 Order at 118. [↑](#footnote-ref-8)
9. OCA Affidavit of Dr. Robert Loube, April 19, 2012, at 4-5, citing July 18, 2011 Order at 118. [↑](#footnote-ref-9)
10. AT&T, Joint Affidavit of E. Christopher Nurse and Dr. Ola A. Oyefusi, April 9, 2012, ¶ 9, at 3-4 and Exh. C. [↑](#footnote-ref-10)
11. OCA Affidavit of Dr. Robert Loube, April 19, 2012, at 6. [↑](#footnote-ref-11)
12. AT&T Letter Submission, Docket No. M-2012-2291824, May 2, 2012, at 1-2 and n. 2. The AT&T May 2, 2012 Letter Submission was triggered by an FCC Order that put forward “standardized spreadsheet templates” for certain filings and tariffs to be submitted to the FCC. *In re Material to be Filed in Support of 2012 Annual Access Tariff Filings*, (FCC Rel. April 19, 2012), WCB/Pricing File No. 12-08, Order, DA 12-575. [↑](#footnote-ref-12)
13. Verizon Letter Submission, Docket No. M-2012-2291824, May 3, 2012. [↑](#footnote-ref-13)
14. OCA, Answer to Updated Petitions for Reconsideration, April 19, 2012, at 4 (the Commission should exercise restraint regarding originating access reform). [↑](#footnote-ref-14)
15. *FCC Order*, Appendix A, 47 C.F.R. § 51.907(b) and § 51.909(b), at 507-508 and 511-512. [↑](#footnote-ref-15)